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PERKINS COIE LLP			MEINECKE DIAZ, SUSANNA M	
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DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/842,265

Applicant(s)

KELLER ET AL.

Examiner

Susanna M. Diaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 35-44 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 and 35-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 9/17/05
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This non-final Office action is responsive to Applicant's election filed June 28, 2005.

Applicant elects Group I; however, Applicant asserts that Group II is similar to Group I and, therefore, both groups should be examined. The Examiner admits that Groups I and II are similar; they are related as combination-subcombination, respectively. However, as set forth in the restriction requirement mailed on May 19, 2005, examination of both Groups I and II would place an undue burden on the examiner. Therefore, these groups will not be rejoined. Applicant has also amended claim 35 to make it dependent from claim 1. Consequently, Applicant submits that Groups I and V should be examined together. However, the Examiner notes that Group V is directed toward prioritizing received item reviews and determining which reviews are to be more expeditiously processed. The specification itself does not contain any disclosure corresponding to Group V, especially the expedited processing details. Therefore, the only support found in Applicant's disclosure as originally filed is in original claims 35-38. First, Applicant's current amendment to claim 35 (and dependent claims 36-38) is not fully supported by the original disclosure and would therefore raise issues of new matter. Second, the originally filed disclosure does not provide support for the integration of Groups I and V into a single, functionally interrelated embodiment. Applicant has elected to prosecute Group I. Claims 35-38 are not directed toward Group I and would further raise issues under 35 U.S.C. § 112, 1<sup>st</sup> if examined with claims 1-9; therefore, the Examiner asserts claims 35-38 to be non-elected.

Applicant has cancelled claims 21-34.

Applicant has added claims 40-44, which are directed toward Group II.

Claims 10-20 and 35-44 stand as non-elected. Please cancel these claims in response to this Office action.

Claims 1-9 are presented for examination.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) or mere

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implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

While claims 1-9 recite a useful, concrete, and tangible result, a recitation of technology is only limited to the preamble. Furthermore, stating that a method is "in a computing system" does not clarify to what extent the computing system is involved with the recited method. For example, if a human does all of the recited steps manually or in his/her head, but then displays the reviews on a computer, such a use of the computing system is deemed to be nominal. Therefore, claims 1-9 are deemed to be non-statutory for failure to sufficiently apply, involve, use, or advance the technological arts.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

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351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Epinions.com, as disclosed in (1) "Home, Netscape, Yahoo! Veterans Announce Epinions.com" (July 12, 1999), (2) "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions" (September 8, 1999), (3) Barrett, "What's Your Epinion?" (September 13, 1999), (4) Tedeschi, "Consumer Products are Being Reviewed on More Web Sites, Some Featuring Comments From Anyone With an Opinion" (October 25, 1999), and (5) Wohl, "User Review - Your Opinions are Highly Valued on the Web" (November 8, 1999). Please note that the cited references provide evidence that Epinions.com was founded in April 1999, the features of Epinions.com were made public as early as July 12, 1999, and the actual web site was officially launched on September 8, 1999.

Epinions.com discloses a method in a computing system for rewarding the provision of useful item reviews, comprising:

[Claim 1] receiving item reviews, each received item review corresponding to an identified item and originating with an identifier reviewer ("Home, Netscape, Yahoo! Veterans Announce Epinions.com": ¶ 4; "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions": ¶ 2);

displaying the received item reviews to customers of a merchant in conjunction with controls usable by the customers to indicate the level of usefulness of each of the

reviews ("Home, Netscape, Yahoo! Veterans Announce Epinions.com": ¶¶ 4, 7;  
"Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by  
Consumer Opinions": ¶¶ 2, 4, 7);

receiving and storing indications of the activation of the displayed controls  
("Home, Netscape, Yahoo! Veterans Announce Epinions.com": ¶ 4; "Epinions.com  
Announces the Launch of its Free Online Shopping Guide Powered by Consumer  
Opinions": ¶¶ 2, 4, 7);

based upon the stored indications of the activation of the displayed controls,  
determining a quantitative measure of the level of usefulness of each of the item  
reviews ("Home, Netscape, Yahoo! Veterans Announce Epinions.com": ¶ 4;  
"Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by  
Consumer Opinions": ¶¶ 2, 4, 7, 8; Tedeschi: ¶¶ 5, 6; Wohl: ¶ 11; Barrett: ¶ 5 -- The  
reviewers who are most highly rated by the community are featured on Epinions' web  
site. In order to assess which reviewers provide the most useful reviews, there must be  
a tally of the assessments of usefulness of the reviews accumulated from the other  
community members. Not only does Epinions quantify the number of times each  
reviewer's review is read by another community member, but it also keeps track of a  
tangible measure (i.e., a score) of how useful the reviewer's reviews are. This is  
necessary to determine how much in incentives to pay out as well as in determining  
which reviewers are most highly rated (i.e., as judged by a tally of ratings from the  
community regarding the usefulness of the reviewer's review) and therefore deserve to  
be featured on Epinions.com. These features of Epinions.com are reiterated in the

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other cited articles, including Tedeschi who states that the reviews are rated on a scale from “not useful” to “very useful” and the reviewer’s picture might be featured on the web site if “their reviews [plural] are widely read” (¶¶ 5, 6) and Wohl who states that “authors are rewarded by having highly rated opinions shown at the top of a search” which is important “because the first opinions shown are the ones most often read” (¶ 11));

for each reviewer, based upon the quantitative measures determined for each of the reviews of the reviewer, determining a score for the reviewer (“Home, Netscape, Yahoo! Veterans Announce Epinions.com”: ¶ 4; “Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions”: ¶¶ 2, 4, 7, 8; Tedeschi: ¶¶ 5, 6; Wohl: ¶ 11 -- By featuring a popular reviewer (i.e., one who produces more useful reviews) on its web site, Epinions.com does assign a designation to the first customer (e.g., a popular reviewer) based on the total vote score for the plurality of reviews authored by the first customer); and

displaying information about at least a portion of the reviewers that reflects their scores (“Home, Netscape, Yahoo! Veterans Announce Epinions.com”: ¶ 4; “Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions”: ¶¶ 2, 4, 7);

[Claim 2] wherein information is displayed about each of a subset of the reviewers having the highest scores (“Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions” discloses that reviewers are paid based on the usefulness of their content, as judged by other community members (¶¶ 2,



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4, 8). The reviewers who are most highly rated by the community are featured on Epinions' web site (§ 7). In order to assess which reviewers provide the most useful reviews, there must be a scoring of the assessments of usefulness of the reviews accumulated from the other community members);

[Claim 4] determining for a selected reviewer a rank of the reviewer's score among the scores of all reviewers, and wherein the information displayed about the selected reviewer includes an indication of the determined rank ("Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions" discloses that reviewers are paid based on the usefulness of their content, as judged by other community members (§§ 2, 4, 8). The reviewers who are most highly rated by the community are featured on Epinions' web site (§ 7), which means that the reviewers are somehow ranked based on these scores);

[Claim 5] wherein the included indication of the determined rank directly indicates the determined rank ("Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions" discloses that reviewers are paid based on the usefulness of their content, as judged by other community members (§§ 2, 4, 8). The reviewers who are most highly rated by the community are featured on Epinions' web site (§ 7), which means that the reviewers are somehow ranked based on these scores. Featured reviewers are understood to be among the top ranked);

[Claim 6] wherein the included indication of the determined rank indicates a range of ranks containing the determined rank ("Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions" discloses that reviewers are

paid based on the usefulness of their content, as judged by other community members (¶¶ 2, 4, 8). The reviewers who are most highly rated by the community are featured on Epinions' web site (¶ 7), which means that the reviewers are somehow ranked based on these scores. Featured reviewers are understood to be among the top ranked);

[Claim 7] wherein the information displayed about the selected reviewer is displayed in a web page directed to the selected reviewer ("Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions" discloses that reviewers are paid based on the usefulness of their content, as judged by other community members (¶¶ 2, 4, 8). The reviewers who are most highly rated by the community are featured on Epinions' web site (¶ 7), which means that the reviewers are somehow ranked based on these scores. Featured reviewers are understood to be among the top ranked);

[Claim 8] wherein the information displayed about the selected reviewer is displayed in conjunction with a review of the selected reviewer ("Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions": ¶¶ 2, 4, 7);

[Claim 9] wherein the information displayed about the selected reviewer is displayed in a prominent location within a web site operated by the merchant : "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions": ¶¶ 2, 4, 7. The reviewers who are most highly rated by the community are featured on Epinions' web site (¶ 7)).

6. Claim 1 is provisionally rejected under 35 U.S.C. 102(e) as being anticipated by copending Application No. 09/715,929 which has a common assignee with the instant

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application. Based upon the earlier effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e), if published under 35 U.S.C. 122(b) or patented. This provisional rejection under 35 U.S.C. 102(e) is based upon a presumption of future publication or patenting of the copending application. As discussed in the Double Patenting rejection below, claim 1 of the instant application is clearly anticipated by the limitations recited in claim 1 of copending Application No. 09/715,929.

This provisional rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131. This rejection may not be overcome by the filing of a terminal disclaimer. See *In re Bartfeld*, 925 F.2d 1450, 17 USPQ2d 1885 (Fed. Cir. 1991).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Epinions.com, as disclosed in (1) "Home, Netscape, Yahoo! Veterans Announce Epinions.com" (July 12, 1999), (2) "Epinions.com Announces the Launch of its Free

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Online Shopping Guide Powered by Consumer Opinions" (September 8, 1999), (3) Barrett, "What's Your Epinion?" (September 13, 1999), (4) Tedeschi, "Consumer Products are Being Reviewed on More Web Sites, Some Featuring Comments From Anyone With an Opinion" (October 25, 1999), and (5) Wohl, "User Review - Your Opinions are Highly Valued on the Web" (November 8, 1999), as applied to claim 1 above. Please note that the cited references provide evidence that Epinions.com was founded in April 1999, the features of Epinions.com were made public as early as July 12, 1999, and the actual web site was officially launched on September 8, 1999.

[Claim 3] Epinions.com performs the steps of claim 1 for a plurality of reviews from each reviewer, as demonstrated by the fact that members of the community can access and rate various reviews from "a list of all written reviews with community ratings" ("Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions": ¶ 4). Epinions.com does not expressly teach that the combined scores for the plurality of reviews itself is actually displayed in the order of descending reviewer scores. However, Official Notice is taken that it is old and well-known in the art of voting to display a total tally count, or score, regarding an overall evaluation/rating of multiple people. This allows one reviewing the results to attain a more accurate assessment of the performance of one person in relation to others, thereby placing the assessment in a more meaningful context. Similarly, Epinions.com desires to establish a community of trusted users ("Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions": ¶ 3) by discouraging contributions from poor and untrustworthy reviewers (Barrett: ¶ 6); therefore, the Examiner asserts

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that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Epinions.com to actively display the scores of evaluations for the plurality of reviews wherein names of the reviewers are displayed in the order of descending reviewer scores in order to provide the community of users with a tool to conveniently attain a more accurate assessment of the performance of each reviewer in relation to other reviewers, thereby placing the assessment in a more meaningful context. In other words, knowing that one reviewer overall has a history of hundreds of useful reviews is helpful when comparing that reviewer to another reviewer who only has a history of only a handful (e.g., less than one hundred) useful reviews overall.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/715,929. Although the conflicting claims are not identical, they are

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not patentably distinct from each other because claim 1 of the instant application is broader than and fully anticipated by claim 1 of co-pending application no. 09/715,929. The Examiner submits that elimination of an element or its functions is obvious in light of prior art that teaches the claimed elements plus additional ones. See *In re Karlson*, 136 USPQ 184, 186; 311 F2d 581 (CCPA 1963).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

**Claim 1**

<b><i>Instant Application No. 09/842,265</i></b>	<b><i>Co-Pending Application No. 09/715,929</i></b>
receiving item reviews, each received item review corresponding to an identified item and originating with an identifier reviewer	providing a product review authored by a first customer over a network to a plurality of other customers
displaying the received item reviews to customers of a merchant in conjunction with controls usable by the customers to indicate the level of usefulness of each of the reviews	receiving votes over the network from other customers indicating whether the product review was helpful (it is understood that the customers manipulate controls to cast votes over a network); displaying the designation in association with the product review
receiving and storing indications of the activation of the displayed controls	providing over the network an indication related to the vote tally for the product review in association with the product review
based upon the stored indications of the activation of the displayed controls, determining a quantitative measure of the level of usefulness of each of the item reviews	tallying votes received for a plurality of reviews authored by the first customer to provide a total tally, the total tally including votes received for the product review
for each reviewer, based upon the quantitative measures determined for each of the reviews of the reviewer, determining a score for the reviewer	assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer
displaying information about at least a portion of the reviewers that reflects their scores	displaying the designation in association with the product review

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Zacharia et al. (U.S. Patent No. 6,895,385) teach a method and system for ascribing a reputation to an entity as a rater of other entities.

Kurzrok (U.S. Patent No. 6,260,064) teaches the use of rating parameters to determine an amount to pay out to an author.

Ginn (U.S. Patent No. 6,275,811) teaches a system and method that rewards authors of positive contributions, as rated by peers.

Robinson (WO 03/034637 A2) -- Discloses a system and method for measuring rating reliability through rater prescience.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 10 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Susanna Diaz*  
Susanna M. Diaz  
Primary Examiner  
Art Unit 3623

September 17, 2005